

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Valley Med Flight, Inc.,

Plaintiff,

vs.

Terry Dwelle, M.D., in his Official Capacity  
as State Health Officer of the North Dakota  
Department of Health, and Bryan Klipfel, in  
his Official Capacity as Executive Director of  
the North Dakota Workforce Safety &  
Insurance,

Defendants.

**ANSWER TO COMPLAINT**

**Case No. 1:15-cv-00070**

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Defendants answer Plaintiff's Complaint for Declaratory and Injunctive Relief (Complaint) (Doc. 1) as follows:

1. Except as specifically admitted or qualified, Defendants deny each and every allegation of the Complaint.

2. With regard to Paragraph 1, Defendants admit Plaintiff seeks to declare invalid various statutes and the Fee Schedule. Defendants deny the remaining allegations of Paragraph 1.

3. With regard to Paragraph 2, 49 U.S.C. § 41713(b) speaks for itself.

4. With regard to Paragraph 3, 2015 HB 1255 speaks for itself. Defendants deny the remaining allegations of Paragraph 3.

5. With regard to Paragraph 4, the Fee Schedule speaks for itself. Defendants deny the remaining allegations of Paragraph 4.

6. Defendants deny Paragraphs 5, 46, 53, 65, 70, 74, 75, 76, 79, 80, 83, 85, 92-94, 97, 98, 100, 104, 105, 108, and 109.

7. Defendants admit Paragraphs 6, 9, 10, 12, 13, 43-45, 47, 49, 50, and 101-103, except the address in Paragraph 10 should be 1600 East Century Avenue, Suite 1,

8. With regard to Paragraph 7, Defendants admit venue is proper in the District of North Dakota. Defendants deny the remaining allegations of Paragraph 7.

9. Defendants lack sufficient knowledge and information to admit or deny the allegations in Paragraphs 8, 14-25, 51, 52, 69, 71, 73, 82, and 84 and, therefore, deny them.

10. With regard to Paragraph 11, Defendants admit North Dakota Workforce Safety and Insurance (WSI) is a state agency charged with managing North Dakota's workers' compensation system. Defendants further admit WSI is not subject to oversight by the North Dakota Insurance Department. Defendants deny the remaining allegations of Paragraph 11.

11. With regard to Paragraphs 26-31, the official legislative history of 2015 HB 1255 speaks for itself.

12. With regard to Paragraphs 32-40, 66, 68, and 87, 2015 HB 1255 speaks for itself.

13. With regard to Paragraph 41, N.D.C.C. § 65-02-08 speaks for itself.

14. With regard to Paragraph 42, the Fee Schedule – Ambulance – 2015 (01/01/2015) speaks for itself.

15. With regard to Paragraph 48, N.D. Admin. Code § 92-01-02-45.1(22) speaks for itself.

16. With regard to Paragraph 54, Cal. Admin. Code tit. 8, § 9789.70 and Montana Admin. R. 24.29.1433(11)(f) speak for themselves.

17. With regard to Paragraph 55, Cal. Admin. Code tit. 8, § 9789.70(b) speaks for itself.

18. With regard to Paragraph 56, Montana Admin. R. 24.29.1433(11)(f) and the Montana Facility Fee Schedule Instruction Set speak for themselves.

19. With regard to Paragraphs 57, 58, 60, and 61, 49 U.S.C. § 40101 and 41713 speak for themselves.

20. With regard to Paragraph 59, the cited case Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992), and H.R. Rep. No. 95-1211 speak for themselves.

21. With regard to Paragraph 62, the cited cases speak for themselves.

22. With regard to Paragraph 63, the Guidelines for the Use and Availability of Helicopter Emergency Medical Transport (HEMS) speak for themselves.

23. With regard to Paragraphs 64, 77, 81, 86, 95, 99, and 106, Defendants incorporate their responses to the previous paragraphs.

24. With regard to the first sentence in Paragraph 67, 2015 HB 1255 speaks for itself. Defendants deny the remaining allegations of Paragraph 67.

25. With regard to Paragraph 72, Defendants admit Plaintiff had to sign an agreement with BCBSND to be listed on the primary call list. Defendants lack sufficient knowledge and information to admit or deny the allegations in Paragraph 72and, therefore, deny them.

26. With regard to Paragraphs 78, 96, and 107, Article VI of the U.S. Constitution speaks for itself.

27. With regard to Paragraph 88, the EMTALA speaks for itself.

28. With regard to Paragraphs 89-91, 42 C.F.R. § 489.24 speaks for itself.

29. Defendants deny Plaintiffs are entitled to the requested relief and affirmatively deny Plaintiffs are entitled to any relief.

### **AFFIRMATIVE DEFENSES AND OTHER DEFENSES**

1. Defendants affirmatively allege the Complaint fails to state a claim against them upon which relief can be granted.

2. Defendants affirmatively allege the challenged statutes and Fee Schedule do not violate Plaintiff's federal rights.

3. Defendants affirmatively allege Plaintiffs are not entitled to the requested injunctive relief.

4. Defendants affirmatively allege Plaintiff's claims are barred by the Eleventh Amendment to the extent Plaintiff may seek retroactive application of any ruling to obtain reimbursement or damages.

5. Defendants respectfully request Plaintiff's Complaint for Declaratory and Injunctive Relief be, in all things, dismissed.

**DEMAND FOR TRIAL BY JURY**

Defendants demand a trial by jury for all issues triable by jury.

Dated this 30<sup>th</sup> day of June, 2015.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By: /s/ Douglas A. Bahr  
Douglas A. Bahr  
Solicitor General  
State Bar ID No. 04940  
Office of Attorney General  
500 North 9<sup>th</sup> Street  
Bismarck, ND 58501-4509  
Telephone (701) 328-3640  
Facsimile (701) 328-4300  
Email [dbahr@nd.gov](mailto:dbahr@nd.gov)

Attorneys for Defendants.

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**CERTIFICATE OF SERVICE**

**Case No. 1:15-cv-00070**

I hereby certify that on June 30, 2015, the following document: **ANSWER TO COMPLAINT** was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to Ronald J. Knoll at [rknoll@andersonbottrell.com](mailto:rknoll@andersonbottrell.com), Joshua M. Feneis at [jfeneis@andersonbottrell.com](mailto:jfeneis@andersonbottrell.com), and Judith R. Nemsick at [judith.nemsick@hklaw.com](mailto:judith.nemsick@hklaw.com).

/s/ Douglas A. Bahr  
Douglas A. Bahr  
Solicitor General  
Email [dbahr@nd.gov](mailto:dbahr@nd.gov)